

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES M. MALARIK, )  
Plaintiff, ) Civil Action No. 08 - 1008  
v. ) Chief District Judge Donetta W. Ambrose  
COMMONWEALTH OF )  
PENNSYLVANIA-OFFICE OF DISTRICT )  
ATTORNEY OF ALLEGHENY COUNTY, )  
Defendant. )

**MEMORANDUM ORDER**

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (doc. no. 1) on July 18, 2008, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Magistrate Judge Lisa Pupo Lenihan filed a Report and Recommendation on July 22, 2008 (doc. no. 3) recommending that the Motion to Proceed *In Forma Pauperis* be denied in accordance with 28 U.S.C. § 1915(g) because Plaintiff has had at least three prior actions dismissed for failure to state a claim upon which relief may be granted. Plaintiff filed Objections to the Report and Recommendation on July 28, 2008 (doc. nos. 4 & 5). Plaintiff's Objections do not undermine the recommendation of the Magistrate Judge. Consequently, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

AND NOW, this 31<sup>st</sup> day of July, 2008;

**IT IS HEREBY ORDERED** that Plaintiff's motions to proceed *in forma pauperis* (doc. nos. 1 & 6) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed for Plaintiff's failure to pay the filing fee, with the right of Plaintiff to reopen by paying the full filing fee of \$350.00 within thirty (30) days.

**IT IS FURTHER ORDERED** that the Report and Recommendation (doc. no. 3) of Magistrate Judge Lenihan dated July 22, 2008, is adopted as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:



Donetta W. Ambrose  
United States District Judge, Chief

cc: Lisa Pupo Lenihan  
United States Magistrate Judge

James M. Malarik, No. 130218  
Allegheny County Jail  
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